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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: MANILA, PHILIPPINES Date: AUG 09 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and 8 U.S.C. § 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Philippines. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to obtain an immigration benefit by fraud and willful misrepresentation of a material fact. Additionally the applicant was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more. On July 2, 1993, the applicant failed to appear for an exclusion hearing and he was subsequently ordered excluded in absentia by an Immigration Judge pursuant to sections 212(a)(5)(A)(i), 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Act. The applicant failed to surrender for removal or depart from the United States until he voluntarily departed on February 14, 2002. He is therefore inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant is the beneficiary of an approved Petition for Alien Relative filed by his U.S. citizen spouse. He seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(i) and 8 U.S.C. § 1182(a)(9)(B)(v) in order to travel to United States and reside with his spouse and child.

The Officer in Charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Officer in Charge Decision* dated July 15, 2003.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that on May 18, 1987, the applicant was admitted into the United States with a B1/B2 nonimmigrant visa for a period of six months, expiring on November 18, 1987. The applicant remained longer than authorized and on October 9, 1989, after divorcing his first spouse, he married a U.S. citizen and filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on an approved Petition for Alien Resident (Form I-130). The Form I-485 was denied because his spouse withdrew the Form I-130 after admitting that the applicant asked her to lie to the immigration service. The applicant was placed in exclusion proceedings and he was found excludable by an Immigration Judge on July 2, 1993. The applicant divorced the petitioner and married another U.S. citizen who filed a Form I-130 on his behalf. The

applicant then filed a new Form I-485. He withdrew the Form I-485 after learning that a final removal order was issued against him, and voluntarily departed to the Philippines on February 14, 2002. It was this departure that triggered his unlawful presence. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until February 14, 2002, the date of his departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .
> >
> > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> >
> > . . . .
> >
> > (v) Waiver. – The Attorney General [now the Secretary of Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(a)(9)(B) of the Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). After reviewing the IIRIRA amendments to the Act regarding fraud, misrepresentation and unlawful presence in the United States and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, in some instances, eliminating children as a consideration in determining the presence of extreme hardship, and providing a ground of inadmissibility for unlawful presence after April 1, 1997, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud, misrepresentation and unlawful presence of aliens in the United States.

As stated above, sections 212(i) and 212(a)(9)(B)(v) of the Act provide that a waiver of the bar to admission resulting from sections 212(a)(6)(C) and 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

In the present case, the applicant must demonstrate extreme hardship to his U.S. citizen spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, counsel asserts that CIS failed to correctly assess extreme hardship to the applicant's spouse (Ms. [redacted] In support of this assertion, counsel submits a brief in which he states that [redacted] would suffer emotionally if her spouse's waiver application is not approved. Counsel further states that [redacted] may be forced to make a decision of either relocating to the Philippines with the applicant or staying in the United States to live with her child. Furthermore counsel states that if [redacted] decided to relocate to the Philippines she would suffer extreme hardship due to her separation from her mother and siblings who reside in the United States.

[redacted] were to relocate with the applicant to the Philippines, it would be expected that some economic, linguistic and cultural difficulties would arise. Aside from generalized country conditions and statements, no evidence was presented to establish that this would impact her at a level commensurate with extreme hardship.

In an affidavit submitted by [redacted] she states that in 1984 she was diagnosed with and treated for Hodgkin's Disease. She further states that in 2000 she underwent two surgeries, one for a lump found in her groin area and one to remove her thyroid gland. Counsel states that [redacted] needs medical observation and that she takes medication daily for her thyroid. No documentary evidence was provided to substantiate the claim that [redacted] did not recover from her surgeries or that she cannot take care of herself. In fact, the record indicates that [redacted] is employed full time. Furthermore, in his brief counsel states that it would be impossible for [redacted] to relocate to the Philippines in order to join her spouse because she would not be able to pursue employment opportunities and she would lose her health insurance and other benefits.

There are no laws that require [redacted] to leave the United States and live abroad. In *Silverman v. Rogers*, 437 F. 2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more that to say that the residence of one of the marriage partners may not be in the United States." The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represent the type of inconvenience and hardship experienced by the families of most aliens being deported. *See Shooshtary v. INS,* 39 F. 3d 1049 (9th Cir. 1994).

A report from a psychologist was submitted which discusses [redacted] background and the interaction between the applicant and his child. The psychologist states that: "...it is apparent that it will be of detriment emotionally to this child, as well as to his wife for him to be absent..." The report was based on one interview with the [redacted] and discusses general hardship that would be imposed on [redacted] and her child if the applicant were to leave the United States. There is no indication of an ongoing relationship with the psychologist. The statements contained in his report do not indicate a high level of distress and are

speculative as to the future effects the separation may cause. Ms [redacted] is gainfully employed and her child is in daycare. She also has the support of family members.

Counsel states that the lack of adequate educational opportunities and separation from the applicant would impose hardship to the applicant's child. As mentioned, sections 212(i) and 212(a)(9)(B)(v) of the Act provide that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident *spouse or parent* of such alien. Congress specifically did not mention extreme hardship to a U.S. citizen or resident child. The assertions regarding the hardship the applicant's child would suffer will thus not be considered.

In addition, on appeal counsel refers to caselaw that addresses cases that dealt with suspension of deportation where hardship to the applicant is taken into consideration. "Extreme hardship" to an alien herself cannot be considered in determining eligibility for a section 212(i) or 212(a)(9)(B)(v) waiver of inadmissibility. *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968).

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996). U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were not permitted to return to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) or 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.